

# BID BOND

(Title 63, Chapter 56, U. C. A. 1953, as Amended)

## KNOW ALL PERSONS BY THESE PRESENTS:

That \_\_\_\_\_ hereinafter referred to as the "Principal," and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_ and authorized to transact business in this State and U. S. Department of the Treasury Listed, (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto the STATE OF UTAH, hereinafter referred to as the "Obligee," in the amount of \$ \_\_\_\_\_ (5% of the accompanying bid), being the sum of this Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH** that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for the \_\_\_\_\_ Project.

**NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH**, that if the said principal does not execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the principal, then the sum of the amount stated above will be forfeited to the State of Utah as liquidated damages and not as a penalty; if the said principal shall execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the Principal, then this obligation shall be null and void. It is expressly understood and agreed that the liability of the Surety for any and all defaults of the Principal hereunder shall be the full penal sum of this Bond. The Surety, for value received, hereby stipulates and agrees that obligations of the Surety under this Bond shall be for a term of sixty (60) days from actual date of the bid opening.

**PROVIDED, HOWEVER**, that this Bond is executed pursuant to provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to same extent as if it were copied at length herein.

**IN WITNESS WHEREOF**, the above bounden parties have executed this instrument under their several seals on the date indicated below, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Principal's name and address (if other than a corporation):**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Principal's name and address (if a corporation):**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Affix Corporate Seal)

**Surety's name and address:**

\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

By: \_\_\_\_\_  
Attorney-in-Fact (Affix Corporate Seal)

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
My Commission Expires: \_\_\_\_\_  
Resides at: \_\_\_\_\_

Agency: \_\_\_\_\_  
Agent: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

NOTARY PUBLIC

Approved As To Form: May 25, 2005  
By Alan S. Bachman, Asst Attorney General



## **INSTRUCTIONS AND SUBCONTRACTORS LIST FORM (VBS)**

All proposers shall submit a list of **ALL** first-tier subcontractors, meeting the following criteria, including the subcontractor's name, bid amount and other information required by these Contract Documents, on the following basis:

**PROJECTS UNDER \$500,000 - ALL SUBS \$20,000 OR OVER MUST BE LISTED**  
**PROJECTS \$500,000 OR MORE - ALL SUBS \$35,000 OR OVER MUST BE LISTED**

- Any additional subcontractors identified in the Request for Proposals shall also be listed.
- The DFCM Director may not consider any proposal submitted by a proposer if the proposer fails to submit a subcontractor list meeting the requirements of State law.
- List subcontractors for base bid as well as the impact on the list that the selection of any alternate may have.
- Proposer may not list more than one subcontractor to perform the same work.
- Proposer must list "Self" if performing work itself.

### **LICENSURE:**

The subcontractor's name, the type of work, the subcontractor's bid amount, and the subcontractor's license number as issued by DOPL, if such license is required under Utah Law, shall be listed. Proposer shall certify that all subcontractors, required to be licensed, are licensed as required by State law. A subcontractor includes a trade contractor or specialty contractor and does not include suppliers who provide only materials, equipment, or supplies to a contractor or subcontractor.

### **PROPOSER LISTING 'SELF' AS PERFORMING THE WORK:**

Any proposer that is properly licensed for the particular work and intends to perform that work itself in lieu of a subcontractor that would otherwise be required to be on the subcontractor list, must insert the term 'Self' for that category on the subcontractor list form. Any listing of 'Self' on the sublist form shall also include the amount allocated for that work.

### **'SPECIAL EXCEPTION':**

A proposer may list 'Special Exception' in place of a subcontractor when the proposer intends to obtain a subcontractor to perform the work at a later date because the proposer was unable to obtain a qualified or reasonable proposal under the provisions of U.C.A. Section 63A-5-208(4). The proposer shall insert the term 'Special Exception' for that category of work, and shall provide documentation with the subcontractor list describing the proposer's efforts to obtain a bid of a qualified subcontractor at a reasonable cost and why the proposer was unable to obtain a qualified subcontractor bid. The Director must find that the proposer complied in good faith with State law requirements for any 'Special Exception' designation, in order for the proposal to be considered. If awarded the contract, the Director shall supervise the proposer's efforts to obtain a qualified subcontractor bid. The amount of the awarded contract may not be adjusted to reflect the actual amount of the subcontractor's bid. Any listing of 'Special Exception' on the sublist form shall also include amount allocated for that work.

## INSTRUCTIONS AND SUBCONTRACTORS LIST FORM

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### **GROUND FOR DISQUALIFICATION:**

The Director may not consider any proposal submitted by a proposer if the proposer fails to submit a subcontractor list meeting the requirements of State law. Director may withhold awarding the contract to a particular proposer if one or more of the proposed subcontractors are considered by the Director to be unqualified to do the Work or for such other reason in the best interest of the State of Utah.

Notwithstanding any other provision in these instructions, if there is a good faith error on the sublist form, at the sole discretion of Director, the Director may provide notice to the proposer and the proposer shall have 24 hours to submit the correction to the Director. If such correction is submitted timely, then the sublist requirements shall be considered met.

### **CHANGES OF SUBCONTRACTORS SPECIFICALLY IDENTIFIED ON SUBLIST FORM:**

Subsequent to submission of the subcontractors list, the contractor may change its listed subcontractors only after receiving written permission from the Director based on complying with all of the following criteria.

- (1) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but not is not limited to, the following reasons: the original subcontractor has failed to perform, or is not qualified or capable of performing, and/or the subcontractor has requested in writing to be released.
- (2) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors.
- (3) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping.
- (4) Any increase in the cost of the subject subcontractor work is borne by the contractor.
- (5) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.
- (6) The Director will give substantial weight to whether the subcontractor has consented in writing to being removed unless the contractor establishes that the subcontractor is not qualified for the work.

### **EXAMPLE:**

Example of a list where there are only four subcontractors

TYPE OF WORK	SUBCONTRACTOR, "SELF" OR "SPECIAL EXCEPTION"	SUBCONTRACTOR BID AMOUNT	CONT. LICENSE #
ELECTRICAL	ABCD Electric Inc.	\$350,000.00	123456789000
LANDSCAPING	"Self"	300,000.00	123456789000
CONCRETE (ALTERNATE #1)	XYZ Concrete Inc	298,000.00	987654321000
MECHANICAL	"Special Exception" (attach documentation)	Fixed at: 350,000.00	(TO BE PROVIDED AFTER OBTAINING SUBCONTRACTOR)

**SUBCONTRACTOR BID AMOUNTS CONTAINED IN THIS SUBCONTRACTOR LIST  
SHALL NOT BE DISCLOSED UNTIL THE CONTRACT HAS BEEN AWARDED.**



## SUBCONTRACTORS LIST

PROJECT TITLE: \_\_\_\_\_

Caution: You must read and comply fully with instructions.

TYPE OF WORK	SUBCONTRACTOR, "SELF" OR "SPECIAL EXCEPTION"	SUBCONTRACTOR BID AMOUNT	CONT. LICENSE #

We certify that:

1. This list includes all subcontractors as required by the instructions, including those related to the base bid as well as any alternates.
2. We have listed "Self" or "Special Exception" in accordance with the instructions.
3. All subcontractors are appropriately licensed as required by State law.

FIRM: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNED BY: \_\_\_\_\_

**NOTICE:** FAILURE TO SUBMIT THIS FORM, PROPERLY COMPLETED AND SIGNED, AS REQUIRED IN THESE CONTRACT DOCUMENTS, SHALL BE GROUNDS FOR DFCM REFUSAL TO ENTER INTO A WRITTEN CONTRACT WITH PROPOSER. ACTION MAY BE TAKEN AGAINST PROPOSERS BID BOND AS DEEMED APPROPRIATE BY DFCM. ATTACH A SECOND PAGE IF NECESSARY.

## **FUGITIVE DUST PLAN**

The Contractor will fill out the form and file the original with the Division of Air Quality and a copy of the form with the Division of Facilities Construction & Management, prior to the issuance of any notice to proceed.

The Contractor will be fully responsible for compliance with the Fugitive Dust Control Plan, including the adequacy of the plan, any damages, fines, liability, and penalty or other action that results from noncompliance.

**Utah Division of Air Quality**

*April 20, 1999*

**GUIDANCE THAT MUST BE CONSIDERED IN DEVELOPING AND SUBMITTING A  
DUST CONTROL PLAN FOR COMPLIANCE WITH R307-309-3, 4, 5, 6, 7**

Source Information:

1. Name of your operation (source): provide a name if the source is a construction site.
2. Address or location of your operation or construction site.
3. UTM coordinates or Longitude/Latitude of stationary emission points at your operation.
4. Lengths of the project, if temporary (time period).
5. Description of process (include all sources of dust and fugitive dust). Please, if necessary, use additional sheets of paper for this description. Be sure to mark it as an attachment.
6. Type of material processed or disturbed.
7. Amount of material processed (tons per year, tons per month, lbs./hr., and applicable units).

8. Destination of product (where will the material produced be used or transported, be specific, provide address or specific location), information needed for temporary relocation applicants.
9. Identify the individual who is responsible for the implementation and maintenance of fugitive dust control measures. List name(s), position(s) and telephone number(s).
10. List, and attach copies of any contract lease, liability agreement with other companies that may, or will, be responsible for dust control on site or on the project.

**Description of Fugitive Dust Emission Activities**  
**(Things to consider in addressing fugitive dust control strategies.)**

1. Type of activities (drilling and blasting, road construction, development construction, earth moving and excavation, handling and hauling materials, cleaning and leveling, etc).
2. List type of equipment generating the fugitive dust.
3. Diagram the location of each activity or piece of equipment on site. Please attach the diagram.
4. Provide pictures or drawings of each activity. Include a drawing of the unpaved/paved road network used to move loads “on” and “off” property.
5. Vehicle miles travels on unpaved roads associated with the activity (average speed).
6. Type of dust emitted at each source (coal, cement, sand, soil, clay, dust, etc.)
7. Estimate the size of the release area at which the activity occurs (square miles). For haul or dirt roads include total miles of road in use during the activity.



## **Description of Fugitive Dust Emission Controls on Site**

Control strategies must be designed to meet 20% opacity or less on site (a lesser opacity may be defined by Approval Order conditions or federal requirements such as NSPS), and control strategies must prevent exceeding 10% opacity from fugitive dust at the property boundary (site boundary) for compliance with R307-309-3.

1. Types of ongoing emission controls proposed for each activity, each piece of equipment, and haul roads.
2. Types of additional dust controls proposed for bare, exposed surfaces (chemical stabilization, synthetic cover, wind breaks, vegetative cover, etc).
3. Method of application of dust suppressant.
4. Frequency of application of dust suppressant.
5. Explain what triggers the use of a special control measure other than routine measures already in place, such as covered loads or measures covered by a permit condition (increase in opacity, high winds, citizen complaints, dry conditions, etc).
6. Explain in detail what control strategies/measures will be implemented off-hours, i.e., Saturdays/Sundays/Holidays, as well as 6 PM to 6 AM each day.

### Description of Fugitive Dust Control Off-site

Prevent, to the maximum extent possible, deposition of materials, which may create fugitive dust on public and private paved roads in compliance with R307-309-5, 6, 7.

1. Types of emission controls initiated by your operation that are in place “off” property (application of water, covered loads, sweeping roads, vehicle cleaning, etc.).
  
2. Proposed remedial controls that will be initiated promptly if materials, which may create fugitive dust, are deposited on public and private paved roads.

Submit the Dust Control Plan to:

Executive Secretary  
Utah Air Quality Board  
POB 144820  
15 North 1950 West  
Salt Lake City, Utah 84114-4820

Phone: (801) 536-4000  
FAX: (801) 536-4099

## **Fugitive Dust Control Plan Violation Report**

When a source is found in violation of R307-309-3 or in violation of the Fugitive Dust Control Plan, the source must submit a report to the Executive Secretary within 15 days after receiving a Notice of Violation. The report must include the following information:

1. Name and address of dust source.
2. Time and duration of dust episode.
3. Meteorological conditions during the dust episode.
4. Total number and type of fugitive dust activities and dust producing equipment within each operation boundary. If no change has occurred from the existing dust control plan, the source should state that the activity/equipment is the same.
5. Fugitive dust activities or dust producing equipment that caused a violation of R-307-309-3 or the source's dust control plan.
6. Reasons for failing to control dust from the dust generating activity or equipment.
7. New and/or additional fugitive dust control strategies necessary to achieve compliance with R307-309-3, 4, 5, 6, or 7.
8. If it can not be demonstrated that the current approved Dust Control Plan can result in compliance with R307-309-3 through 7, the Dust Control Plan must be revised so as to demonstrate compliance with 307-309-3 through 7. Within 30 days of receiving a fugitive dust Notice of Violation, the source must submit the revised Plan to the Executive Secretary for review and approval.

Submit the Dust Control Plan to:

Executive Secretary  
Utah Air Quality Board  
POB 144820

15 North 1950 West  
Salt Lake City, Utah 84114-4820

Phone: (801) 536-4000

FAX: (801) 536-4099

Attachments: DFCM Form FDR R-307-309, Rule 307-309

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**CONSTRUCTION MANAGER/  
GENERAL CONTRACTOR AGREEMENT**

for

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called "DFCM", and \_\_\_\_\_, a corporation of the State of Utah, authorized to do business in the State of Utah, hereinafter called the "Construction Manager/General Contractor" or "CM/GC", whose address is \_\_\_\_\_.

WITNESSETH: WHEREAS, the DFCM intends to have built the \_\_\_\_\_, and \_\_\_\_\_,

WHEREAS, the CM/GC agrees to perform construction management (including General Contractor) services for the sum herein stated.

THEREFORE, the DFCM and the CM/GC for the consideration hereinafter provided, agree as follows:

**ARTICLE 1.**  
**CONSTRUCTION MANAGER'S SERVICE AND  
RESPONSIBILITIES**

The CM/GC covenants with the DFCM to further the interests of the DFCM by furnishing the CM/GC's skill and judgment in cooperation with, and in reliance upon, the services of \_\_\_\_\_ (**DESIGN FIRM**), hereinafter referred to as the A/E. The CM/GC agrees to furnish business, administrative, management and construction services and to perform in an expeditious and economical manner consistent with the interests of the DFCM. In performing its obligations hereunder, CM/GC shall be deemed an independent contractor and not an agent or employee of DFCM. CM/GC shall have exclusive authority to manage, direct, and control the Work. The term "CM/GC" as used in this Agreement is deemed to include all the duties of a General Contractor, including those described in the DFCM General Conditions dated May 25, 2005, which are a part of the Contract Documents and hereby incorporated by reference as part of this Agreement as well as the professional services of a business, administrative and management consultant to the DFCM. Unless specifically defined in this Agreement, all terms used in this Agreement shall be as defined in said General Conditions. The term "A/E" shall be the designer hired by the DFCM for the subject project, including the A/E's consultants at all tiers.

The services of CM/GC and all those for whom the CM/GC is liable at any tier shall be performed in accordance with and judged solely by the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services on projects similar in type, magnitude and complexity to the Project that is the subject of this Agreement. The CM/GC shall be liable to the DFCM or the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. an A/E

claim against DFCM or the State of Utah), to the extent caused by wrongful or negligent acts, errors or omissions that do not meet this standard of care.

## **BASIC SERVICES**

The CM/GC's Basic Services consist of the two phases described below and any other services included in this Agreement as Basic Services.

### **1.1 PRECONSTRUCTION PHASE** The CM/GC shall perform the following:

- 1.1.1 Provide for the DFCM's review and acceptance, and periodically update a Project schedule that coordinates and integrates the CM/GC's services, the A/E's services and the DFCM's responsibilities with anticipated construction schedules.
- 1.1.2 Prepare for the DFCM's approval a detailed estimate of Construction Cost, as defined in Article 3 below, developed by using estimating techniques which anticipate the various elements of the Project, and based on schematic design documents prepared by the A/E. Update and refine this estimate periodically. Provide a final cost estimate based upon approved final documents, divide the estimate into bid packages as an aid during bidding. Advise the DFCM and the A/E if it appears that the Construction Cost may exceed the Fixed Limit Construction Cost. Make recommendations for corrective action.
- 1.1.3 Without assuming the A/E's responsibility for coordinating Construction Documents, consult with the DFCM and the A/E regarding drawings and specifications as they are being prepared, and recommend alternative solutions whenever design details are identified which significantly affect construction feasibility, costs or schedules.
  - 1.1.3.1 Provide recommendations and information to the DFCM and the A/E regarding the assignment of responsibilities for safety precautions and programs; temporary Project facilities; and equipment, materials and services for common use of Subcontractors. Verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents.
  - 1.1.3.2 Advise on the separation of the Project into phases for various categories of Work. Develop the method to be used for selecting Subcontractors and awarding contracts in accordance with applicable law.
  - 1.1.3.3 Develop a Project construction schedule providing for all major elements such as phasing of construction and times of commencement and completion required of each separate Subcontractor. Provide the Project construction schedule for each set of bidding documents.
  - 1.1.3.4 Investigate and recommend a schedule of the DFCM's purchases of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the A/E. Expedite and coordinate delivery of these purchases.

- 1.1.4 Provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases.
- 1.1.5 For purposes of this Agreement, the term “bid” and other terms based on that word used in the invitation to bid process shall be deemed to refer to “proposal” and the corollary words related to the request for proposal process, when the request for proposal process is used in lieu of an invitation for bids. Prepare prequalification criteria for bidders and develop Subcontractor interest in the Project or any phase or segment thereof to be separately let. Recommend bidding schedules and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials or methods.
- 1.1.6 All procurements recommended and conducted by the Construction Manager/General Contractor shall be in accordance with one of the source selection methods provided for in the Utah Procurement Code, UCA 63-56, “Part 4, Source Selections and Contract Formation,” and the applicable rules of the Utah State Building Board in Utah Administrative Code R23 in the same manner as if the subcontract work was procured directly by the DFCM.
- 1.1.7 With the A/E's assistance, receive bids, prepare bid analyses and make recommendations to the DFCM for award of subcontracts or rejection of bids. Per UCA 63-56-501(2) and applicable Utah law, the CM/GC may make recommendations that it be allowed to self-perform portions of the work for the benefit of the Project but shall procure subcontracted work in a manner that would have been allowable if the DFCM were procuring the subcontract work directly. The CM/GC shall not self-perform any portion of the Work without advance written approval of the DFCM.
- 1.1.8 With the A/E's assistance, conduct pre-award conferences with successful bidders. Prepare Subcontractor agreements subject to DFCM's approval and advise the DFCM on the acceptability of Subcontractors and materials suppliers proposed by Subcontractors. CM/GC shall accept assignment of any bids awarded and shall be fully responsible for the performance of its Subcontractors and suppliers at any tier similarly to a General Contractor under the DFCM General Conditions.
- 1.1.9 If it is reasonably determined by the DFCM Director or designee that the CM/GC has not provided satisfactory preconstruction services, the DFCM Director or designee may determine to terminate this Agreement upon ten (10) days notice to the CM/GC and may use another CM/GC to complete the preconstruction phase and/or perform the construction phase services. All items required to be transferred or delivered to DFCM under the General Conditions for a termination for cause shall be so transferred or delivered promptly by the CM/GC to DFCM. Upon such termination, the CM/GC sole remedy shall be payment for properly performed services up to the date of such termination. The CM/GC shall be liable to DFCM for all damages and liabilities provided for in this Agreement.

## **1.2 CONSTRUCTION PHASE**

The CM/GC shall complete construction in accordance with Contract Documents prepared by the A/E and approved by the DFCM. After such approval by the DFCM, the construction phase will commence with the awarding and signing contracts and purchase orders with Subcontractors and suppliers for labor and materials.

- 1.2.1 Provide administrative, management and related services as required to coordinate Work of the Subcontractors with each other and with the activities and responsibilities of the CM/GC, the DFCM and the A/E to complete the Project in accordance with the DFCM's objectives for cost, time and quality. The CM/GC shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement. The CM/GC shall provide competent supervision of all phases or segments of the Work and shall cause the Work to be performed in strict and complete accordance with the Contract Documents and all matters indicated or implied therefrom. The CM/GC's Project Superintendent for the Project shall be designated in writing prior to commencement of Construction Phase of this Agreement; such designated individual shall be subject to the approval of DFCM and shall not be reassigned or otherwise removed as the Project Superintendent unless said individual shall leave the employ of CM/GC or unless DFCM shall request or approve a change in the designated Project Superintendent. Any replaced Project Superintendent shall also be subject to approval of the DFCM and the same requirements for reassignment or removal stated herein shall apply. DFCM shall similarly have the right to approve all other top level supervisory and administrative personnel assigned to this Project and same shall not be changed without the prior consent of DFCM.
- 1.2.2 Schedule and conduct pre-construction, construction and progress meetings to discuss such matters as procedures, progress, problems and scheduling. Prepare and promptly distribute minutes of all such meetings. Said minutes shall not be considered official minutes until approved by the DFCM.
  - 1.2.2.1 CM/GC shall provide the critical path scheduling and periodic updating thereof and other necessary schedules in the interest of completing the improvements in the most expeditious and economical manner. (Progress Schedules) The Schedule shall include the activities of Subcontractors on the Project, including activity sequences and durations, allocations of labor and materials, processing of shop drawings, product data and samples, and delivery of products requiring long lead time procurement and the DFCM's occupancy requirements showing portions of the Project having occupancy priority. The CM/GC shall update and reissue the Project construction schedule as required to show current conditions and revisions required by actual experience. The schedule shall be prepared and updated by the CM/GC as provided for in the General Conditions.
  - 1.2.2.2 The CM/GC shall revise and refine the approved estimate of Construction Cost, incorporate approved changes as they occur, and develop cash flow reports and forecasts as needed.
- 1.2.3 Provide regular monitoring of the approved estimate of Construction Cost, showing actual costs for activities in progress and estimates for uncompleted tasks. Identify variances between actual and budgeted or estimated costs, and advise the DFCM and the A/E whenever projected costs exceed budgets or estimates. The CM/GC shall:
  - 1.2.3.1 Maintain cost accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, or other Work requiring accounting records.

- 1.2.3.2 Recommend necessary or desirable changes to the DFCM, review requests for changes, assist in negotiating Subcontractors' bids/proposals, submit recommendations to the DFCM, and if they are accepted, prepare and sign Change Orders for the A/E's signature and the DFCM's signature.
- 1.2.3.3 Develop and implement procedures for the review and processing of applications by Subcontractors for progress and final payments. Make recommendations to the A/E for certification to the DFCM for payment.
- 1.2.4 Be responsible for the overall safety of the Project and shall review the safety programs developed by each of the Subcontractors as required by the Contract Documents. CM/GC shall fulfill the safety responsibilities provided for in the General Conditions.
- 1.2.5 If required by the DFCM or the Contract Documents, assist the DFCM in selecting and retaining the professional services of surveyors, special consultants and testing laboratories and coordinate their services.
- 1.2.6 Determine that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents. Guard the DFCM against defects and deficiencies in the Work. The CM/GC shall timely recommend to the DFCM all special inspections or testing needed to assure compliance with the Contract Documents. Upon receiving the DFCM's approval of such testing or inspection request, the CM/GC shall arrange for such testing or inspection to occur in a timely manner. Subject to review by the A/E, reject Work which does not conform to the requirements of the Contract Documents.
- 1.2.7 Promptly submit to the A/E and the DFCM, any Subcontractor requests for interpretations of the meaning and intent of the drawings and specifications, and promptly assist in the resolution of questions when may arise.
- 1.2.8 Receive Certificates of Insurance from the Subcontractors, and upon specific request, forward to the DFCM and/or A/E.
- 1.2.9 Receive from the Subcontractors and review all shop drawings, product data, samples and other submittals and review such for conformance with the Contract Documents and transmit such to the A/E for approval. Establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals.
- 1.2.10 Record the progress of the Project. Submit written progress reports to the DFCM including information on each Subcontractor and each Subcontractor's Work. Also show percentages of completion and the number and amounts of change orders. Keep a daily log containing a record of weather, Subcontractors' Work on the site, number of workers, work accomplished, all necessary data for verification of Subcontractor performance, including, but not limited to unit quantities, performed subject to Unit Prices, problems encountered, and other similar relevant data as the DFCM may require. Make the log available to the DFCM and the A/E promptly upon request.



Maintain at the Project site, on a current basis: a record copy of all contracts, drawings, specifications, addenda, change orders and other Modifications, in good order and marked to record all changes made during construction; all shop drawings, product data; samples; submittals; purchases; materials; equipment; applicable hand books; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the contracts or work. Make all records promptly available to the DFCM upon request. At the completion of Project, promptly deliver all such records to the DFCM.

- 1.2.11 Arrange for delivery and storage, protection and security for DFCM purchased materials, systems and equipment which are a part of the Project, until such items are incorporated into the Project.
- 1.2.12 With the A/E and the DFCM's maintenance personnel, observe the Subcontractors' checkout of utilities, operations systems and equipment for readiness and assist in their initial start-up and testing.
- 1.2.13 Determine when the Project, or a portion thereof, is ready for a Substantial Completion inspection and shall accomplish the completion of punch list items as provided for in the General Conditions.
- 1.2.14 The extent of the duties, responsibilities and limitations of authority of the CM/GC as a representative of the DFCM during construction shall not be modified or extended without the written consent of the DFCM.

### **1.3 ADDITIONAL SERVICES**

The following Additional Services shall be performed by the CM/GC upon authorization in advance and in writing from the DFCM and shall be paid for as provided in this Agreement:

- 1.3.1 Services related to DFCM-provided furnishings and equipment not specified in the Contract Documents.
- 1.3.2 Consultation on replacement of Work damaged by fire or other cause during construction, and furnishing services in conjunction with the replacement of such Work.
- 1.3.3 Recruiting or training maintenance personnel.
- 1.3.4 Inspections of, and services related to, the Project after the end of the warranty phase.

### **1.4 TIME AND DELAY REMEDY**

Time is of the essence for any and all the performance required by this Agreement. The CM/GC shall perform basic and additional services as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project. "Reasonable skill" shall be the skill that would be customarily expected from a CM/GC for the subject project, given its complexity and scope and is considered to be no less than above-average performance for CM/GC services. At the time a bid date is set for a particular subcontract, DFCM and CM/GC will jointly establish a completion date (or dates) for the Work of that subcontract which shall apply to the CM/GC and all of the Subcontractors for that particular subcontract. The completion date shall be established by an amendment to this Agreement executed by the DFCM and the CM/GC.

The CM/GC agrees to pay liquidated damages in the amount of \$\_\_\_\_\_ per day for each day after expiration of the Contract Time until the CM/GC achieves Substantial Completion in accordance with the Contract Documents, if CM/GC's delay makes the damages applicable. The provision for liquidated damages is: (a) to compensate the DFCM for delay only; (b) is provided for herein because actual damages can not be readily ascertained at the time of execution of this Agreement; (c) is not a penalty; and (d) shall not prevent the DFCM from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.

No PRE, Claim or action shall be maintained by the CM/GC, Subcontractors or suppliers at any tier, against the DFCM for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of the DFCM or its officers, employees or agents, except as expressly provided in the General Conditions. The CM/GC may receive a written extension of time, signed by the DFCM, in which to complete the Work under this Agreement in accordance with the General Conditions.

## **ARTICLE 2.**

### **THE DFCM'S RESPONSIBILITIES**

- 2.1 The DFCM shall provide information regarding the DFCM's requirements of the Project.
- 2.2 The DFCM shall provide a budget for the Project after consultation with the CM/GC and the A/E, which shall include contingencies for bidding, changes during construction and other costs which are the responsibility of the DFCM.
- 2.3 The DFCM shall designate a representative authorized to act in the DFCM's behalf with respect to the Project. The DFCM, or such authorized representative, shall examine documents submitted by the CM/GC and shall render decisions pertaining thereto in a timely manner in order to avoid unreasonable delay in the progress of the CM/GC's services.
- 2.4 The DFCM may furnish structural, mechanical, chemical and other laboratory tests, inspections and reports if required by site conditions.
- 2.5 The DFCM shall furnish such legal, accounting and insurance counseling services as the DFCM deems appropriate, including such auditing services as the DFCM may require to verify the Project applications for payments or to ascertain how or for what purposes the Subcontractors have used the monies paid by or on behalf of the DFCM.
- 2.6 The DFCM shall furnish to the CM/GC a compact disc containing the Construction Documents and sufficient hard copies to meet the needs of the Project for bidding and construction management.
- 2.7 The DFCM reserves the right to perform Work related to the Project with the DFCM's own forces, and to award contracts to other entities in connection with the Project which are not part of the CM/GC's responsibilities under this Agreement. The CM/GC shall coordinate the CMGC's Work with work of the DFCM's separate contractors as required by the Contract Documents. The CM/GC shall promptly notify the DFCM if any such independent action will in any way compromise the CM/GC's ability to meet the CM/GC's responsibilities under this Agreement.

**ARTICLE 3.**  
**CONSTRUCTION COST**

- 3.1 Construction Cost shall be the total of the final contract sums of all of the separate subcontracts, actual reimbursable costs relating to the construction phase as defined in Article 5 of this Agreement, and the CM/GC's fees.
- 3.2 Construction Cost does not include the compensation of the A/E and its consultants, or the cost of inspections or testing provided for by the DFCM.
- 3.3 Evaluations of the DFCM's Project budget and cost estimates prepared by the CM/GC represent the CM/GC's best judgment as a professional familiar with the construction industry. It is recognized, however, that neither the CM/GC nor the DFCM has control over the cost of labor, materials or equipment, Subcontractors' methods of determining bid prices or other competitive bidding or negotiating conditions. Accordingly, the CM/GC cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the DFCM, or from any cost estimate or evaluation prepared by the CM/GC. However, this does not excuse the CM/GC from the standard of care as a professional provided for in this Agreement and if it is determined that the CM/GC breached this standard of care in providing budget and cost estimates, DFCM reserves the right to seek all available appropriate remedies from the CM/GC.
- 3.4 The CM/GC shall include contingencies during design for design, bidding and price escalation, and shall consult with the A/E to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest alternate bids in the Construction Documents as needed to adjust the Construction Cost to the fixed limit. The Contractor shall continue to reduce this contingency throughout the design process.
- 3.5 When requested by the DFCM, the CM/GC shall establish a Guaranteed Maximum Price (GMP). At the point the GMP is established, the Contractor will be allowed to carry a contingency commensurate with its risk. If the CM/GC is not required to establish a GMP until the completion of Contract Documents and the bidding process, then a maximum contingency of 3% of the Fixed Limit of Construction Costs (FLCC) amount will be allowed as a construction contingency amount. Any use of the contingency funds within the GMP shall be recommended by the Contractor and approved by both the DFCM and the Contractor, however DFCM approval of contingency fund use shall not be unreasonably withheld. This contingency fund can only be used for following types of work and for only direct cost of construction:
- cost escalation in order to establish the GMP
  - construction errors by the CM
  - replacement of defective work self-performed by the CM
  - items included in the Contract Documents, but missed by the CM in establishing the GMP

This contingency cannot cover items such as:

- errors by subcontractors at any tier
- coordination issues between subcontractors at any tier
- replacement of defective work installed by subcontractors at any tier

If the entire 3% contingency fund is used during construction, any additional funds must be provided at 100% by the CM/GC.

At the completion of this Agreement, any dollars remaining in the contingency shall be divided with 70% returning to the State and 30% going to the CM/GC.

Design errors and omissions, unforeseen site conditions, and scope changes do not apply to this contingency fund and will be funded from other sources.

The FLCC may only be increased by a Modification approved in advance and in writing by the DFCM as provided in the General Conditions. Prior to establishing the GMP, if the FLCC is exceeded by the sum of the lowest figures from bona fide bids or negotiated proposals plus the CM/GC's estimate of other elements of Construction Cost for the Project, the DFCM shall in the DFCM's sole discretion (1) give written approval of an increase in such limit; (2) authorize rebidding or renegotiation of the Project or portions of the Project within a reasonable time; (3) cooperate in revising the scope or quality of the Work as required to reduce the Construction Cost; and/or (4) terminate the Project. The CM/GC, without additional compensation, shall cooperate with the A/E as necessary to bring the Construction Cost within the fixed limit.

#### **ARTICLE 4.** **PAYMENTS TO THE CM/GC**

##### **4.1 PAYMENTS FOR BASIC SERVICES.**

- 4.1.1 Subject to the applicable provisions of the General Conditions, payments for Basic Services, upon proper invoicing, justification and documentation, shall be made monthly and shall be in proportion to services performed within each phase of services on the basis set forth in Article 5 of this Agreement.
- 4.1.2 Retainage in the amount of 5% of the amount due to Subcontractors shall be withheld from each payment until completion of the Work as provided in paragraph 4.3 of this Agreement and under Utah law.

##### **4.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE COSTS**

Payments on account of the CM/GC's additional services, as defined in Paragraph 1.3, and for Reimbursable costs, as defined in Article 5, shall be made monthly upon proper invoicing, justification and documentation.

##### **4.3 GENERAL PAYMENT, RETAINAGE AND ACCOUNTING PROVISIONS**

All applicable provisions of the General Conditions regarding payment, withholding of payment, certification of payment and other payment requirements and rights of the DFCM and CM/GC shall apply. The CM/GC shall provide DFCM within thirty (30) days of request by DFCM, a schedule of accounts and budgets for Work which will be a basis for applications for payment. The DFCM agrees to pay the CM/GC for the construction Work from time to time as the Work progresses, but not more than once each month after the date of Notice to Proceed, and only upon Certificate of the A/E as approved by the DFCM which approval may not

unreasonably be withheld, for Work performed during the preceding calendar month, ninety-five percent (95%) of the value of labor performed and ninety-five percent (95%) of the value of materials furnished in place or on the site. The CM/GC agrees to furnish the DFCM invoices for materials purchased and on site but not installed, for which CM/GC requests payment and agrees to safeguard and protect such equipment or materials and is responsible for the safekeeping thereof and if such be stolen, lost or destroyed, to replace same.

Such evidence of labor performed and materials furnished as the DFCM may responsibly require shall be supplied by the CM/GC at the time of request for Certificate of Payment on account. Materials for which payment has been made cannot be removed from the job site without DFCM's written approval. The retainage, including any additional retainage imposed and the release of any retainage, shall be in accordance with UCA 13-8-5 as amended. CM/GC shall also comply with the requirements of UCA 13-8-5 as amended, including restrictions of retainage regarding Subcontractors and the distribution of interest earned on the retention proceeds. The DFCM shall not be responsible for enforcing the CM/GC's obligations under State law in fulfilling the retention law requirements with Subcontractors at any tier.

Notwithstanding the above, retention requirements shall not apply to Preconstruction Services, Design or Construction Management fees, or "general conditions" costs. Retention funds shall be held by DFCM, in an interest bearing account with said interest to accrue to the account of the CM/GC. Said interest shall be distributed by DFCM to CM/GC upon release of retention funds.

## **ARTICLE 5.** **BASIS OF COMPENSATION**

***(USE ONLY ON AGREEMENTS FOR PRE-CONSTRUCTION SERVICES ONLY)*** This Agreement shall initially include only the scope of work and compensation for the pre-construction phase for an initial contract agreement of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_). Compensation and scope of work may be authorized as provided for in this Agreement within the timeframe set forth in this request for proposals. Concurrent with the authorization to proceed with the Construction Phase, CM/GC shall provide 100% Payment and Performance Bonds for the amount of the Fixed Limit of Construction Costs and meeting the requirements contained in the Contract Documents. CM/GC shall have no authority to proceed to the Construction Phase without written authorization from the DFCM.

The Fixed Limit of Construction Costs (FLCC) for this Agreement is \$ \_\_\_\_\_, including the CM/GC's fees. The parties shall work together to adjust the scope of work to stay within the FLCC. The FLCC may only be increased by change order properly executed by the parties, and issued only when the GMP is exceeded and the change order meets the requirements of this Agreement and/or the DFCM General Conditions. The DFCM shall compensate the CM/GC for the scope of services provided, in accordance with Article 4 of this Agreement, payments to the CM/GC, and the other terms and conditions of this Agreement as follows:

- 5.1 **PRE-CONSTRUCTION PHASE COMPENSATION.** For work performed as described in section 1.1, the Construction Management firm will be compensated \$ \_\_\_\_\_. This shall include the cost of all labor, salaries along with consumable materials required to perform the services. It shall include insurance, benefits, employment taxes, overhead and profit.

- 5.2 **CONSTRUCTION PHASE COMPENSATION.** The Construction Phase will be based on the final agreed upon ~~to~~ scope of Work as shown on the approved drawings and specifications. After the final drawings and specification are approved, DFCM shall modify this Agreement to reflect a Guaranteed Maximum Price based on the CM/GC's final cost estimate. Agreement to a Guaranteed Maximum Price shall be evidenced by a Modification to this Agreement. Notwithstanding the provisions of Article 3, once the Agreement has been modified to incorporate a Guaranteed Maximum Price, the CM/GC guarantees that the construction cost for the agreed to scope of work will not exceed the Guaranteed Maximum Price. The Guaranteed Maximum Price may only be increased by a duly executed Modification, fully executed by the DFCM, to this Agreement resulting from a change in the scope of work.

The CM/GC's fee for Work performed during the entire construction phase duration including punch list completion will be \$\_\_\_\_\_. This includes the cost as outlined in the \_\_\_\_\_ Management Plan dated \_\_\_\_\_, which is hereby made part of this Agreement by reference. This includes employment taxes, insurance, workers compensation, and benefits for the salaries covered by this subparagraph.

The monthly construction supervision cost, per the proposal, is \$\_\_\_\_\_ per month for the duration of the construction work on the project.

For additional Work performed by Subcontractors, the Construction Management firm will be compensated 5% of the subcontract or material price in lieu of the markups otherwise provided for in the General Conditions. This compensation is for coordination and supervision of the subcontract work.

If the DFCM authorizes the CM/GC to self-perform portions of the Work, said Work shall be compensated as a Cost of the Work and reimbursed at actual cost incurred (direct personnel expense, including labor burden, materials, equipment, etc.) plus a \_\_\_\_\_% self-performed work fee. Self performed work eligible for said fee shall only include labor, materials, and equipment provided directly by the CM/GC and not by related subcontractors nor items furnished by the CM/GC as a general conditions item for the benefit of more than one trade/subcontractor, even if the provision of such benefits the CM/GC's self-performed cause.

The CM/GC shall be compensated as a Cost of the Work and reimbursed at actual cost incurred up to the Guaranteed Maximum Price for items required for the construction of the project that are shared by more than one Subcontractor. Items included are such things as cranes, power, water, heat, temporary toilets, safety precautions including site items such as snow removal, fencing, and security.

## **ARTICLE 6.** **OTHER CONDITIONS OF COST**

- 6.1 The term Cost of the Work shall mean costs necessarily incurred in the proper performance of the Work and paid by the CM/GC. Such costs shall be at rates not higher than those submitted with the attached schedule, which is hereby made part of this Agreement by reference, and shall include the items set forth below in Article 6.
- 6.2 The following other conditions of cost apply to costs other than the CM/GC's fee. Compensation for these items is not included in CM/GC's fee but is part of the Cost of the Work.

- 6.2.1 Salaries and wages for personnel in the direct employ of the CM/GC, other than those included in the CM/GC's fee as provided for in Article 5 of this Agreement, and to the extent required to accomplish the Work. Reimbursement shall be made under a salary or wage schedule agreed upon by the DFCM and CM/GC and incorporated into this Agreement and shall include any costs for taxes, benefits, and workers compensation insurance.
- 6.2.2 Cost of all materials, supplies, temporary facilities, services, and equipment to the extent required to accomplish the work, including costs of transportation.
- 6.2.3 Payments made by the CM/GC to Subcontractors for work performed pursuant to subcontracts under this Agreement.
- 6.2.4 Rental charges of all necessary machinery and equipment exclusive of hand tools, used at the site of the work, whether rented from the CM/GC or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, shall be at rental charges consistent with prevailing (current edition) "Rental Rate Blue Book for Construction Equipment", Vol. I and Vol. II, published by Dataquest.
- 6.2.5 Sales, use or similar taxes related to the work and for which the CM/GC is liable and imposed by any governmental authority.
- 6.2.6 Other than for those matters caused by the fault or negligence of the CM/GC, royalties, damages for infringement of patents and costs of defending suits related thereto.
- 6.2.7 Cost of removal of all debris.
- 6.2.8 Costs incurred due to an emergency affecting the safety of persons and property.
- 6.2.9 Other costs incurred in the performance of the Work if and to the extent approved in advance and in writing by the DFCM.
- 6.2.10 Cost of premiums for insurance which the CM/GC is required by the Contract Documents to purchase and maintain based on the amount of the FLCC.
- 6.2.11 Cost of payment and performance bonds based on the amount of the FLCC.
- 6.3 The following other conditions of cost apply to the CM/GC's fee. Compensation for these items is included in the CM/GC's fee and not subject to any additional payment by DFCM.
  - 6.3.1 Losses and expenses, sustained by the CM/GC in connection with the Work, to the extent they have resulted from the act, fault or negligence of the CM/GC, any Subcontractor or supplier at any tier or anyone for whom the CM/GC may be liable, including but not limited to any loss or expense related to securing the property as required by this Agreement or to prevent injury to persons.

- 6.3.3 Legal and consultant expenses reasonably and properly resulting from prosecution of the Project for the DFCM to the extent they have resulted from the act, fault or negligence of the CM/GC, any Subcontractor or supplier at any tier or anyone for whom the CM/GC may be liable, including but not limited to any such expense relating to securing the property as required by this Agreement or to prevent injury to persons.
- 6.3.4 Notwithstanding any other provision of this Agreement, CM/GC shall reimburse DFCM for the portion of any expenses paid by DFCM to CM/GC which is attributable to the CM/GC's breach of its duties under this Agreement, including the breach of any duty by any Subcontractor or supplier at any tier or anyone for whom the CM/GC may be liable.

**ARTICLE 7.**  
**COSTS NOT TO BE REIMBURSED**

- 7.1 The following items shall not be included in the Cost of the Work except to the extent they are included in the CM/GC's fee.
  - 7.1.1 Expenses of the CM/GC's principal and branch offices.
  - 7.1.2 Any part of the CM/GC's capital expenses, including interest on the CM/GC's capital employed for the work.
  - 7.1.3 Overhead or general expenses of any kind, except as may be expressly included in Article 6 of this Agreement.
  - 7.1.4 Costs due to the act, fault or negligence of the CM/GC and Subcontractors or suppliers at any tier, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.
  - 7.1.5 The cost of any item not specifically and expressly included in the items described in Article 6 of this Agreement.

**ARTICLE 8.**  
**TERMINATION, SUSPENSION OR ABANDONMENT**

This Agreement may be terminated, suspended or abandoned in accordance with the General Conditions.

**ARTICLE 9.**  
**DISPUTE RESOLUTION**

Any dispute, PRE or Claim between the parties shall be subject to the provisions of Article 7 of the General Conditions. DFCM reserves all rights to pursue its rights and remedies as provided in the General Conditions.



**ARTICLE 10.**  
**SUCCESSORS AND ASSIGNS**

The DFCM and CM/GC, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to partners, successors, assigns and legal representatives of such other party with respect to all covenants, provisions, rights and responsibilities of this Agreement. The CM/GC shall not assign this Agreement without the prior written consent of the DFCM, nor shall the CM/GC assign any moneys due or to become due as well as any rights under this Agreement, without prior written consent of the DFCM.

**ARTICLE 11.**  
**EXTENT OF AGREEMENT**

This Agreement includes this Agreement, the Request for Proposals for this Project, said General Conditions, Supplemental General Conditions, final drawings as approved by DFCM for this Project, the CMGC's Proposal for this project, the CM/GC's bonds submitted to DFCM, and the attached schedules; all of which are hereby incorporated by reference as a part of this Agreement. This Agreement represents the entire and integrated Agreement between the DFCM and the CM/GC and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the DFCM and the CM/GC.

The following documents shall be read together with the provisions of this Agreement, and in case of irreconcilable conflict between any provisions of the various documents, the first mentioned document in the following list shall control: this Agreement, the final drawings and specifications (as approved by the DFCM), the CMGC's Proposal for this Project as may be modified as required by attachment to this Agreement, the DFCM's Request for Proposal for this Project, the Supplemental General Conditions, General Conditions, the CM/GC's bonds submitted to DFCM, and the schedules attached to this Agreement.

The CM/GC shall be deemed the "Contractor" as referred to in said General Conditions. The DFCM and CM/GC ("Contractor" as referred to in said General Conditions) shall be bound by all the requirements and provisions of said General Conditions.

It is intended that this CM/GC's Agreement not reiterate all the applicable provisions of said General Conditions and the fact that some provisions are reiterated herein does not lessen the importance of the provisions that are not so reiterated.

**ARTICLE 12.**  
**AUTHORITY TO EXECUTE AND PERFORM AGREEMENT**

CM/GC and DFCM each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers. Each signatory below represents that he/she is duly authorized by their respective entity to execute this Agreement on behalf of their respective entity.

**ARTICLE 13.**  
**ATTORNEY FEES AND COSTS**

Except as otherwise provided in the dispute resolution provisions of the General Conditions, the prevailing party shall be entitled to reasonable attorney fees and costs incurred in any action in any court of competent jurisdiction and/or appellate body to enforce this Agreement or recover damages or any other action as a result of a breach thereof.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first above written.

**CM/GC:** \_\_\_\_\_

\_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

\_\_\_\_\_  
Please type/print name clearly

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me, \_\_\_\_\_, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the \_\_\_\_\_ (title or office) of the firm and that said document was signed by him (her) in behalf of said firm.

(SEAL)

\_\_\_\_\_  
**Notary Public**

My Commission Expires \_\_\_\_\_

APPROVED AS TO FORM:  
ATTORNEY GENERAL  
October 14, 2005  
By Alan S. Bachman  
Asst Attorney General

**DIVISION OF FACILITIES  
CONSTRUCTION AND MANAGEMENT**

\_\_\_\_\_  
Capital Development Date

Approved for Expenditure:

Approved as to availability of funds:

\_\_\_\_\_  
Division of Finance Date

\_\_\_\_\_  
David D. Williams, Jr. Date  
DFCM Administrative Services Director

**PERFORMANCE BOND**  
(Title 63, Chapter 56, U. C. A. 1953, as Amended)

That \_\_\_\_\_ hereinafter referred to as the "Principal" and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_ and authorized to transact business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto the State of Utah, hereinafter referred to as the "Obligee," in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a certain written Contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to construct \_\_\_\_\_ in the County of \_\_\_\_\_, State of Utah, Project No. \_\_\_\_\_, for the approximate sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which Contract is hereby incorporated by reference herein.

**NOW, THEREFORE**, the condition of this obligation is such that if the said Principal shall faithfully perform the Contract in accordance with the Contract Documents including, but not limited to, the Plans, Specifications and conditions thereof, the one year performance warranty, and the terms of the Contract as said Contract may be subject to Modifications or changes, then this obligation shall be void; otherwise it shall remain in full force and effect.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the state named herein or the heirs, executors, administrators or successors of the Owner.

The parties agree that the dispute provisions provided in the Contract Documents apply and shall constitute the sole dispute procedures of the parties.

**PROVIDED, HOWEVER**, that this Bond is executed pursuant to the Provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**WITNESS OR ATTESTATION:**

**PRINCIPAL:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

(Seal)

Title: \_\_\_\_\_

**WITNESS OR ATTESTATION:**

**SURETY:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact

(Seal)

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney in-fact of the above-named Surety Company and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires: \_\_\_\_\_

Resides at: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

**Agency:** \_\_\_\_\_  
**Agent:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_

Approved As To Form: May 25, 20050  
By Alan S. Bachman, Asst Attorney General

## PAYMENT BOND

(Title 63, Chapter 56, U. C. A. 1953, as Amended)

### KNOW ALL PERSONS BY THESE PRESENTS:

That \_\_\_\_\_ hereinafter referred to as the "Principal," and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ authorized to do business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); with its principal office in the City of \_\_\_\_\_, hereinafter referred to as the "Surety," are held and firmly bound unto the State of Utah hereinafter referred to as the "Obligee," in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a certain written Contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to construct \_\_\_\_\_ in the County of \_\_\_\_\_, State of Utah, Project No. \_\_\_\_\_ for the approximate sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which contract is hereby incorporated by reference herein.

**NOW, THEREFORE**, the condition of this obligation is such that if the said Principal shall pay all claimants supplying labor or materials to Principal or Principal's Subcontractors in compliance with the provisions of Title 63, Chapter 56, of Utah Code Annotated, 1953, as amended, and in the prosecution of the Work provided for in said Contract, then, this obligation shall be void; otherwise it shall remain in full force and effect.

That said Surety to this Bond, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder, or the specifications or drawings accompanying same shall in any way affect its obligation on this Bond, and does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Work or to the specifications or drawings and agrees that they shall become part of the Contract Documents.

**PROVIDED, HOWEVER**, that this Bond is executed pursuant to the provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

### WITNESS OR ATTESTATION:

### PRINCIPAL:

By: \_\_\_\_\_  
(Seal)

Title: \_\_\_\_\_

### WITNESS OR ATTESTATION:

### SURETY:

By: \_\_\_\_\_  
Attorney-in-Fact (Seal)

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires: \_\_\_\_\_  
Resides at: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

**Agency:** \_\_\_\_\_  
**Agent:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_

Approved As To Form: May 25, 2005  
By Alan S. Bachman, Asst Attorney General



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES  
**Division of Facilities Construction and Management**

**DFCM**

**CHANGE ORDER # \_\_\_\_\_**

CONTRACTOR: \_\_\_\_\_

AGENCY OR INSTITUTION: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

CONTRACT NUMBER: \_\_\_\_\_

ARCHITECT: \_\_\_\_\_

DATE: \_\_\_\_\_

CONSTRUCTION CHANGE DIRECTIVE NO.	PROPOSAL REQUEST NO.	AMOUNT		DAYS	
		INCREASE	DECREASE	INCREASE	DECREASE

	Amount	Days	Date
ORIGINAL CONTRACT			
TOTAL PREVIOUS CHANGE ORDERS			
TOTAL THIS CHANGE ORDER			
ADJUSTED CONTRACT			

DFCM and Contractor agree that the terms, contract sum, scope of the Work and time specified in this Change Order shall constitute the full accord and satisfaction, and complete adjustment to the Contract and includes all direct and indirect costs and effects related to, incidental to, and/or reasonably implied from such change in the contract terms, sum, scope of the Work and time.

Contractor: \_\_\_\_\_ Date \_\_\_\_\_

Architect/Engineer: \_\_\_\_\_ Date \_\_\_\_\_

Agency or Institution: \_\_\_\_\_ Date \_\_\_\_\_

DFCM: \_\_\_\_\_ Date \_\_\_\_\_

Funding Verification: \_\_\_\_\_ Date \_\_\_\_\_



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

**Division of Facilities Construction and Management****DFCM****CERTIFICATE OF SUBSTANTIAL COMPLETION**

PROJECT \_\_\_\_\_ PROJECT NO: \_\_\_\_\_

AGENCY/INSTITUTION \_\_\_\_\_

AREA ACCEPTED \_\_\_\_\_

The Work performed under the subject Contract has been reviewed on this date and found to be Substantially Completed as defined in the General Conditions; including that the construction is sufficiently completed in accordance with the Contract Documents, as modified by any change orders agreed to by the parties, so that the State of Utah can occupy the Project or specified area of the Project for the use for which it is intended.

The DFCM - (Owner) accepts the Project or specified area of the Project as Substantially Complete and will assume full possession of the Project or specified area of the Project at \_\_\_\_\_ (time) on \_\_\_\_\_ (date).

The DFCM accepts the Project for occupancy and agrees to assume full responsibility for maintenance and operation, including utilities and insurance, of the Project subject to the itemized responsibilities and/or exceptions noted below:

The Owner acknowledges receipt of the following closeout and transition materials:

☐ Record Drawings    ☐ O & M Manuals    ☐ Warranty Documents    ☐ Completion of Training Requirements

A list of items to be completed or corrected (Punch List) is attached hereto. The failure to include an item on it does not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents, including authorized changes thereof. The amount of \_\_\_\_\_. (Twice the value of the punch list work) shall be retained to assure the completion of the punch list work.

The Contractor shall complete or correct the Work on the list of (Punch List) items appended hereto within \_\_\_\_\_ calendar days from the above date of issuance of this Certificate. If the list of items is not completed within the time allotted the Owner has the right to be compensated for the delays and/or complete the work with the help of independent contractor at the expense of the retained project funds. If the retained project funds are insufficient to cover the delay/completion damages, the Owner shall be promptly reimbursed for the balance of the funds needed to compensate the Owner.

\_\_\_\_\_  
CONTRACTOR (include name of firm)    by: \_\_\_\_\_  
(Signature)    DATE

\_\_\_\_\_  
A/E (include name of firm)    by: \_\_\_\_\_  
(Signature)    DATE

\_\_\_\_\_  
USING INSTITUTION OR AGENCY    by: \_\_\_\_\_  
(Signature)    DATE

\_\_\_\_\_  
DFCM (Owner)    by: \_\_\_\_\_  
(Signature)    DATE

4110 State Office Building, Salt Lake City, Utah 84114  
telephone 801-538-3018 • facsimile 801-538-3267 • <http://dfcm.utah.gov>

cc: Parties Noted  
DFCM, Director